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IN THE

Supreme Court of the United States

October Term, 1961

No. 117

IN THE MATTER

of

JOHN W. SOERGEL, THOMAS MAFRICI, LEO R. PRIEST, THOMAS CRANDALL, CARMEN FERRANTE, CHARLES TEDESCO, and the BOARD OF TRUSTEES OF UNION FREE SCHOOL DISTRICT NO. 6,

Appellants,

vs.

JAMES E. ALLEN, as Commissioner of Education of the State of New York,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

REPLY

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REPLY

The net effect, if not the purpose, of appellee's motion to dismiss the appeal is to divert attention from the constitutional points raised by the appellants, and concentrate on legal ques-

tions which, so far as this Court is concerned, have been conclusively determined by the decision of the Court of Appeals of the State of New York. For example, at the very end of his motion papers, appellee states:

> "From the discussion hereinabove it seems abundantly clear that appellee based his determination on a fully reasonable and rational basis and fully complied with the statutory requirements and procedures of the New York State Education Law in making his order of March 29, 1957, which is here under attack."

Appellants do not and cannot question that under the decision of the New York Court of Appeals what the appellee did in putting District No. 6 in the new Central School District was sanctioned by the New York State Education Law.

Appellants do, however, contend that under such construction of the New York State statute their constitutional rights under the Fourteenth Amendment were violated in that, having the legal right to use the Syracuse school system, they could receive no possible benefit from being put in the new Central School District and having imposed upon them the burden of a new central school system for which they have no use.

This constitutional contention of appellants is sharply focused by two arguments made on pages 20 and 21 of appellee's motion papers.

On page 21 appellee states:

> "The system is a state education system and is supported by a combination of State and local taxation. If schools are purely a local benefit as appellants claim, then statewide taxation to support local schools would be likewise improper."

Appellants do not now claim and have never claimed that the statewide taxes which they are paying,—income taxes and

other statewide taxes,—are unconstitutional or improper because of these taxes are being used by the state for the support of education in the state. But they do claim that the local real property taxes which the new Central School District will levy on their real property are invalid and unconstitutional because appellants, for the reasons stated in their jurisdictional statement, will and can derive no benefit from such local taxes.

On page 20 of his motion papers appellee speaks of voting rights which appellants will gain as a result of centralization. The inference apparently is that appellants did not have voting rights prior to the affirmance of the Commissioner's centralization order by the New York courts. The facts are that appellants were voters in their own separate and independent school system which they controlled. They elected a school board each year. They levied and collected taxes. They provided transportation for the district's children to Syracuse schools. And they had—and have still—as a matter of statute the *right* to a tuition-free education for the district's children in Syracuse schools. (See the bottom of page 5 and the top of page 6 of the Jurisdictional Statement herein.) (Appellee on his motion to dismiss now changes his position and asserts on page 20 of his motion papers that the children of the district attend the Syracuse schools "on sufferance.")

Appellants, and the other residents of District No. 6, are deprived by centralization of these most valuable and meaningful voting rights. Such voting rights as they receive under centralization are factually meaningless, since they will be but a minority among the total number of voters in the whole Central District. And, as part of the Central School District, there seems to be no way that appellants can assure their children of transportation to the Syracuse schools.

On page 18 of his motion to dismiss appellee cites In the Matter of the *Board of Education of Union Free School Dis-*

trict No. 3 of the Town of Oyster Bay etc. v. Allen (361 U. S. 535). This case is readily distinguishable. In the cited case the appellants did not have a complete school system. For example, they had in their district no high school. The appellants here have the statutory right to have their children attend the Syracuse schools and use all the facilities of this complete educational system. Appellants object to paying local real property taxes to support the new central school system for which they have no use and from which they will receive no benefits.

Respectfully submitted,

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